IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.12 OF 2007
[FOR LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2006

Shri.Dadasaheb Jagannath Jadhav. ..Applicant.

Versus

Shri.Popat Pralhad Jagtap
and 11 Ors. ..Respondents.

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Mr.Dilip Bodake, Adv. for the Applicant.
Mrs.A.S.Pai, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 07, 2007.

P.C.:

1. The applicant-orig.complainant has filed this application for leave to appeal against the judgment and order dated 26.9.2006 passed by the learned JMFC, Mhaswad in S.C.C.No.27 of 2004. By the said judgment and order, the learned Magistrate acquitted the respondents-orig.accused of the offences punishable under Sections 323, 504 and 506 read with 34 of IPC.

2. Heard the learned Advocate for the applicant-orig.complainant and the learned APP for the State. Perused the judgment and order as well as the evidence which has been annexed to the present application. After going through the same, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

3. The case of the complainant PW-1 Dadasaheb Jadhav is that his land is adjacent to the land of the accused. The accused had constructed two wells in the land and lifted the water unauthorizedly. As PW-1 Dadasaheb filed a complaint with the Irrigation Department and MSEB, therefore, accused persons started abusing and threatening him. It is further the case of the complainant that on 4.12.2003 at about 10:00 a.m. the accused beat him by fist and kick blows and also abused him in filthy language. The complainant, therefore, went to Mhaswad police station. However, police informed him that the dispute is of civil nature. Hence PW-1 Dadasaheb

lodged a private complaint against the respondents-accused.

4. On perusal of the evidence it is seen that the complainant has admitted that the accused did not dig the wells in his agricultural land and were not lifting the water from his well. He further admitted that the accused have purchased the land from private land holder for digging the well. He further admitted that electric motors are installed on the said wells and pipeline is also installed. He further admitted that the two wells are owned by accused Nos.3 & 4 separately and they have separate electric motors and separate pipelines. The complainant further admitted that the electric motors on the said wells are installed with due sanction of MSEB. He further admitted that the wells are entered into the record of rights of the said lands. He further stated that inspite of his complaint, MSEB and Irrigation Department have not taken any action against accused Nos.3 & 4. He further admitted that police informed that the dispute is of a Civil nature. The complainant also admitted

in his cross-examination that accused Nos.2 & 3 are leaders of Varkute-Malavadi and other accused are their followers. The complainant admitted that he is belonging to other party headed by Dasharath Aba Jagtap. He further admitted that he has no good relations with accused. He further admitted that the accused are belonging to the political parties and they are respectable persons in the village. Thus, it is seen that there is enmity in between two political groups and the complainant is member of Dasharath Jagtap's group a rival group of accused. Moreover it is seen from the record that just prior to the filing of the present complaint, the accused had filed criminal complaint against the complainant regarding abusing and threatening them which was registered as N.C. No.242 of 2003. Therefore the applicant had a reason to harbour a grudge against the respondents.

5. In support of his case the complainant has also examined PW-2 Madhukar Nivrutti Jadhav as well as PW-3 Dattatraya Jagannath Jadhav. PW-3 Dattatraya Jagannath Jadhav is the real brother of

the complainant and PW-2 Madhukar Jadhav is a near relative of the complainant. No independent witness though available was examined by the complainant, only interested witnesses have been examined. The witnesses have stated that many persons had gathered at the spot at the time of the incident yet no independent witness has been examined.

6. As far as assault on the complainant is concerned, none of the witnesses have categorically stated about the incident but, they have categorically stated that accused beat the complainant and abused and threatened him. But there is no concrete evidence that actually which accused beat the complainant. It is seen that the complainant failed to state categorically who actually beat him. He has casually stated that all the accused beat him, but there is neither mention of names of accused in the deposition of the complainant nor in the evidence of other witnesses.

7. As far as giving of abuses and threats to

the complainant is concerned, from the record it is seen that none of the witnesses have categorically stated about the specific words used by the accused to insult the complainant or the words used to give threats to the complainant.

8. As far as assault on the complainant is concerned, Dr.Ms.Tejaswini Kale who has been examined has stated that all the injuries are simple in nature and the injuries found on the person of the complainant can be caused by falling on the ground. Moreover, the Doctor has stated that she cannot state the exact time when the patient sustained injuries on his person.

9. One other vital factor which goes against the applicant is that there is inordinate delay in lodging the complaint. According to the complainant, the incident took place on 4.12.2003. However the complaint came to be filed only on 11.3.2004. This inordinate delay has not been explained satisfactorily by the complainant. In the decision of this Court in the case of **K.H.Agarwal Vs. State of Maharashtra** reported in

1995(2) B.Cr.C.472, it has been observed that :-

> "No plausible explanation has been forthcoming from the side of prosecution for inordinate delay in lodging of F.I.R. that being so, submission that delay in lodging of F.I.R. was on account of the fact that false insinuation and accusation were being planed against the accused cannot be said to be without any substance."

10. The learned Magistrate has taken all these aspects into consideration and has thereafter acquitted the respondents-accused.

11. Looking to material on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

12. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would

have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)